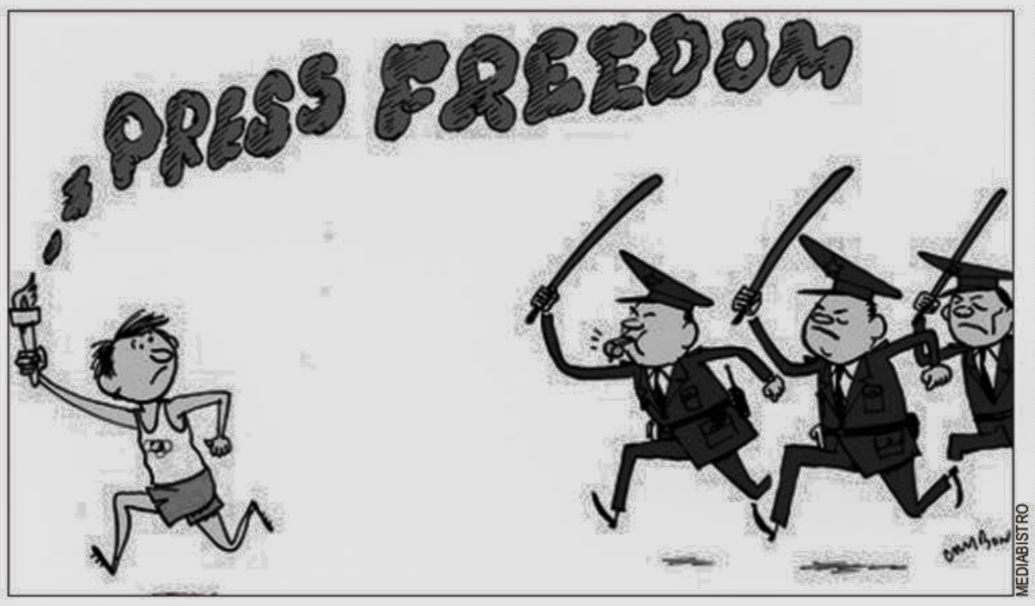
REVIEWING *the views*

Contempt of court Vs freedom of press



MEDIABISTRO

M RAFIQUL ISLAM

THE Supreme Court on 19 August 2010 has sentenced the acting editor of Amar Desh to 6 months jail for contempt of court arising from a published report questioning the integrity and political neutrality of judges. This decision once again exposes the uneasy co-existence of the law governing contempt of court and the press freedom. In contrast though, the High Court on 22 March 2007 rejected a petition for contempt proceedings against the Daily Manabzamin, which also doubted the qualifications, honesty, and impartiality of judges. But its editor received jail term in a prior contempt case (Cassette Scandal) in May 2002. Justice Naimuddin Ahmed, a retired HC judge, was also made a party to the Cassette Scandal case for his allegedly contemptuous statement published in two national dailies. His statement underscored the lack of judicial accountability for failure to issue a suo motu rule in such a serious allegation of telephonic conversation between a judge and a convict. The HC made a ruling directing the retired judge and the two newspapers that published the impugned comment to show cause as to why contempt proceedings would not be drawn against them for scandalising the judges and the court through public remarks. Justice Ahmed and the newspapers were acquitted. But the chief editor of one of the newspapers was punished with jail term and fine. These examples tend to suggest that the law of contempt of court warrants reform for specificity to ensure uniformity and certainty.

There is no compelling reason to believe that the general public should always be happy with the role of the judiciary and its judges. There is no statutory bar on the public and press criticism of judges and their judgments, though such criticism is rare for a variety of reasons. One such reason is the fear of contempt of court action. The essence of contempt is an action or inaction amounting to an interference with or the obstruction of the due administration of justice. The objective of the contempt proceedings is to protect the prestige, dignity, and authority of the court (Onish v Dulla Mia, 1969 AIR 214; State v Abdur Rashid, 1964 PLD Dacca 241; Moazzem Hossain v State 1983, 35 DLR 290; Abdul Karim Sarkar v State 1986, 38 DLR AD 188). Freedom of thought, conscience, and speech is a fundamental right under various international human rights instruments (such as ICCPR of which Bangladesh is a party) and under Article 39 of the Bangladesh Constitution subject to reasonable restrictions, which include contempt of court. The Contempt of Court Act 1926, as adopted in Bangladesh from British colonial administration in India, does not define the expression "contempt of court" nor does it identify the acts constituting such contempt. This vacuum often enables a court to exercise its contempt jurisdiction widely with a great deal of discretion.

There is a pertinent body of case law that has developed the principles and objectives of contempt action, particularly when the public criticism of judicial conduct constitutes an act of contempt of court. The Lahore HC held that judges and courts are open to public criticism. No court would treat reasonable arguments against any judicial act as contrary to law or the public good as the contempt of court. The court further observed that justice does not live in seclusion and in the protection of cloisters; it is an essential part of practical life and should therefore be open to fair comment in State v Abdul Latif (1961) PLD Lah 51. It also held that criticism of the conduct of judges, which cannot possibly have the tendency to obstruct or interfere with the administration of justice, is not contempt of court in Edward Snelson v Judges (1964)16 DLR FC 535. The Bangladesh SC held that a court is to suffer criticism made against it and only in exceptional cases of bad faith or ill motive should it resort to the law of contempt in Saleem Ullah v State (1992) 44 DLR AD 309. The SC also recognised freedom of speech and expression entrenched in Article 39 of the Constitution as a right to express one's own opinion absolutely freely by spoken words, writing, printing, painting, or in any other manner in Dewan Abdul Kader v Bangladesh (1994) 46 DLR 596.

In Australia, all judicial functions are open to public scrutiny. The CJ of South Australia observed: "No judge worthy of the judicial officer will resent or fear such accountability. To the contrary, the judiciary should welcome it, even when it is misused" (Journal of Judicial Administration vol. 11 at 169, 174). Lord Denning justified the freedom of press as a watcher of the judicial functions: "In every court in England you will find a newspaper reporter. He notes all that goes on and makes a fair and accurate report of it. He is the watchdog of justice. The judges will be careful to see that the trial is fairly and properly conducted if he realises that any unfairness or impropriety on his part will be noted by those in Court and may be reported in the press. He will be more anxious to give a correct decision if he knows that his reasons must justify themselves at the Bar of public opinion" (Denning, The Road to Justice, 1955, p 64).

The press could be the best watchdog to ensure judicial accountability to the public. The degree of public confidence in the judiciary is contingent upon the public perception of the integrity and transparency of its decision-making process. The freedom of press requires fairness and ethical standard in discharging its duty especially in reporting on the affairs of the judiciary. If the press plays a strictly responsible role in reporting on the prevalent impropriety of the judiciary, it would be of much help to warn the judges to be honest and sincere. Judges are perceived to be persons of high integrity and impeccable character. They are expected to adopt exceptionally high moral standards. Press criticisms may help them in the reconsideration of a decision on appeal. Freedom to criticise and analyse judgments goes a long way in upholding the fundamental right to the press freedom.

It is imperative that Bangladesh respects the press as an effective means of the public scrutiny of judicial conducts. Some form of legal regulation may be necessary to prevent irresponsible reporting that may damage the image of the judiciary. The judiciary appreciates the press publicity of its positive role in upholding the constitutional guarantees. It must also appreciate press criticism of judicial misconducts, if any. Attempts at strict regulation of the press through contempt proceedings under any dubious circumstances are likely to raise public concern. The judiciary need not be obsessed with contempt actions in an attempt to insulate itself from press criticisms. The essence of the law of contempt is to preserve the public confidence in the judiciary (Abdul Mannan v State 1997, 29 DLR 311). Continuous practice of judicial immunity from public criticisms through contempt actions may considerably diminish public confidence in the judiciary.

The law of contempt has undergone changes in many countries. India has enacted its new Contempt of Court Act 1971, which defines the actions that constitute contempt (s2) and provides that fair criticism on the decided cases is not a contemptuous conduct (s5). The UK has enacted a new law in 1981 that emphasises "good faith" in respect of publications (The Contempt of Court Act 1981, s5). The outdated law of contempt in Bangladesh calls for major amendment or may be replaced by a new law, defining the actions or omissions that constitute such contempt, having regard to the public rights to know and criticise the judicial functions constructively. A crucial criterion should be that if a press report is found true and it provides ample clues to detect a judicial misfeasance, the court may ignore the contempt issue in the greater interest of transparency, accountability, and natural justice. Responsible public criticisms of the judiciary expressed through the media may force it to be more careful, rational, and fair in decision-making. The judiciary benefits from such criticisms, which in effect augment its public image. In the process, both public confidence in the judiciary and freedom of press are maximised. It is erroneous to view press criticisms inimical to judicial independence. Judicial independence and accountability are mutually complementary in that the former endures if the latter strengthens.

Good governance calls for a balanced judiciary, which is both independent and accountable in exercising its judicial powers. Judicial independence is not a privilege for judges. It is rather a means to protect the citizens' freedom and rights in law. Judicial independence devoid of popular approval is hollow and self-defeating. The revolutionary progression of information technology has led to the informed thinking of the people on various pivotal issues affecting their daily life. This process has rendered these issues mass-oriented and created collective public interest in them with increasing demand for social justice. The judiciary is expected to be more sensitive to public interest and social accountability. The press, often being seen as the mirror of the society, has a constructive role to play in ventilating pressing issues, albeit including judicial functioning, to the public domain. Since judges are in positions of power to provide justice, pressure for accountability has increasingly been brought to bear on them. In exercising its constitutional power on behalf of the people, the judiciary owes its accountability to the people, who are entitled to an institution in which they can be confident. And its judges must be able to defend and explain the ways in which they exercise their judicial powers. An effective balance must be achieved between the role of judges and journalists as well as between freedom of press and the administration of natural justice.

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HUMAN RIGHTS *advocacy*

COMBATING DOMESTIC VIOLENCE

Urging for a community based mechanism

SALMA ALI

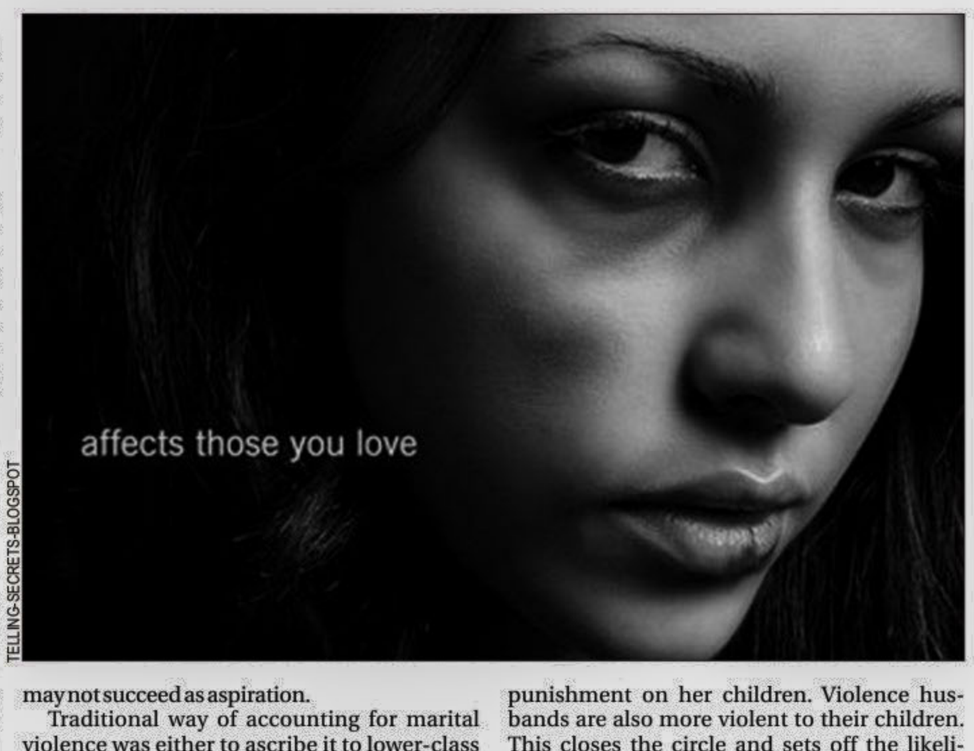
THE Government during the regular cabinet meeting has approved the proposed law on domestic violence, which reflects the demand of the women folk of the country and met government commitment to adopt a legislation to criminalise violence against women at domestic level. We all congratulate the government for considering the demand of the women rights organisations since decades. Bangladesh has a good number of laws conducive to the rights of women but still weakness in the existing laws are factors that help perpetuate Domestic Violence and thus BNWLA involving other women rights organisations had been advocating for the Domestic Violence [Protection & Prevention] Law 2010, which was passed by the Cabinet and still waiting to be passed by the National Parliament. The law is a combination of both the criminal and civil in nature where all the protection orders to be made under the law will be of Civil in nature and disobeying of such protection order will be treated as Criminal Offence for which punishment has been suggested in the law. BNWLA experiences suggest that it's not about enactment of new laws but the challenges lies in the implementation of the law. The proposed law which has been developed reflecting the opinion from the grassroots and different professionals including legal experts also suggested for ensuring training of the personnel to be involved in the implementation process and urged for allocating adequate resources needed for setting up the implementation mechanism.

Bangladesh has a number of laws conducive to the rights of women but the state is not completely able to ensure rights of woman at domestic level. In reported incidences that takes place each and every day implicate that Violence against Women still remain as the deadly fact in our society where women are persecuted by close associates like husbands and relatives at domestic level at large. Domestic violence is the most unrecognised form of violence and a very pervasive, serious social malady in every cluster of the society whether rich or poor, literate or illiterate, developed or underdeveloped. Domestic violence especially wife beating has been found as the most widespread form of violence against women. The forms are gargantuan and not covered under the existing laws of the land. The saddest part of the existing legal instruments is that woman has to wait to be brutally tortured or injured certified by a registered doctor to get justice, without which complaints of torture/violence are not taken into cognisance. This is because immediate reforms are needed to bring the required change in the legal arrangement so that in one hand domestic violence can be addressed according to the intensity of the committed offence and prohibiting misuse of that arrangement in other hand.

Only the physical violence are visible that includes threats and ends up with emotional disaster and psychological disorder of the concerned individual or family, which are not commonly attributed in our existing social norms and practices. Spouse battering is not an isolated incident. Typically Domestic Violence is directed against women which includes physical, sexual, economical and emotional or psychological.

More absolutely it has been found as a fashion existing as if such behaviours heighten the value of being man in the society. Interestingly it prevails both in the affluent and lower class of the society, the difference is that when it happens in the slum we notice quickly as the women come out of their homes shouting but in the affluent class of the society we notice only when it turns into a suicide or when any body is brutally murdered. Such circumstances pose a serious threat in designing social programmes for addressing violence against women and girl child in general and Domestic Violence in particular. So called social prestige also found as one of the inherent causes of such silent violence against women and in most cases woman has to faces indecent queries like, "What did you do to make your husband angry"? People at large continue to believe that domestic violence is a private matter between a couple, rather than a criminal offence that demands a strong, swift and integrated response to resolve. We should help the society to keep up such superstitious believes and extending support to possible sufferers.

Family as multisided reality now a day has become a topic of controversies cutting in all directions. The concept of joint family has been fading away giving birth of nucleus families, which has turned into center of violence. BNWLA records suggest that families have become one of the most common contexts of violence in our society. If any individual fails to respect his or her family members s/he can never respect the norms of a society. Behaviours among the members in a family construct the social attitude at large which is said to be changed for addressing Domestic Violence and restoration of piece in family. So without attempting to make respectful of every individual towards other members of their family programming against domestic violence may not succeed as aspiration.



TELLING-SECRETS-BLOGSPOT

Traditional way of accounting for marital violence was either to ascribe it to lower-class culture or else to describe it as psychologically pathological and deviant. As we have experienced, there is some support for the idea that the lower class is especially prone to violence, but this cannot be the whole story, since violence also occur in middle class. What it implies, sociologically, is that there is a wide spread cultural belief that women should behave in certain ways; if they do not, it is legitimate to violence against them. Laws actually gave a husband the right to physically chastise his wife for nagging or other offence against her unless it is not mentionable or serious in nature.

There is evidence that intergenerational transmission of violence affects women. A woman who was abused by her own parents is more likely to stay in a violent relationship with her husband. This is because she tends to perceive violence as normal, or because she has low self-esteem and little sense that she could improve the situation and cumulatively lives in greater social insecurity. She does not have any option to leave her violent husband and return to her parents. Perhaps even more importantly, husbands who were subjected to a great deal of physical punishment when they were children are especially like to assault their wives. The more violent a husband is to his wife, the more likely she is to use violent punishment on her children. Violence husbands are also more violent to their children. This closes the circle and sets off the likelihood of children growing up to become spouse abusers in the next generation. This vicious cycle has to be broken for addressing Domestic Violence, which cannot be attained only through ensuring strict enforcement of laws. We need to device an integrated social response very immediately.

In addition programming against Domestic Violence requires measure to change social attitude and beliefs that legitimate male violence and essence of male superiority. The measure might include changes in education, incentive to enhance the moral quality during the tender age. Urgent initiatives needed to board creating a social safety net based on community participation that includes supports like counselling and legal aid as protective measures. In addition to that integral services for identifying the possible victims and enhancing local government initiatives so that they can handle such victims within their capacity and jurisdiction. Largely media can play a pivotal role in framing the attitude of the society along with the Domestic Violence [Protection & Prevention] Law 2010, which requires urgent and immediate response for implementation.

The author is an Advocate and the Executive Director of Bangladesh National Woman Lawyer's Association (BNWLA).

LAW *campaign*

ICRC calls on states to join convention against enforced disappearance

MORE States should urgently become party to the International Convention for the Protection of All Persons from Enforced Disappearance, a key instrument to prevent and eradicate disappearances, the International Committee of the Red Cross (ICRC) said August 27, 2010. In the run-up to the International Day of the Disappeared on 30 August, the ICRC expressed regret that the convention has still not entered into force as it has not yet been ratified by 20 States. To date, 83 States have signed the convention and 19 have become party to it.

"This convention sends a message of hope to the families of the disappeared," said Olivier Dubois, deputy head of the Central Tracing Agency and Protection Division of the ICRC. "Causing people to disappear by means of secret imprisonment, abduction or extrajudicial killing can never be justified. The families of the disappeared experience extreme pain and anxiety, which can last for years sometimes a lifetime and make it difficult for them to lead normal lives. It is imperative that as many States as possible sign and become party to the convention."

Enforced disappearance is a crime under international human rights law and when it occurs in war under international humanitarian law. The convention contains a series of measures to prevent forced disappearances, including the requirement that any person deprived of liberty must be registered by the detaining authority. It also establishes the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person. States that sign and ratify the treaty have to make enforced disappearance an offence under their national criminal law.

In every situation of armed conflict or internal violence, people disappear. The tragedy affects millions of people all over the world. The ICRC works to prevent people from going missing, to help clarify what happened to those who do disappear and to support the families of missing persons.

The ICRC seeks to ensure that the needs of the families of missing people including their legal, financial, social and psychological needs are met. It accepts tracing requests and attempts to locate missing people, an endeavour that can involve visits to places of detention, hospitals or morgues, or appeals to the authorities to investigate. Tracing can be a complex and lengthy process involving the participation not only of the ICRC but also of National Red Cross or Red Crescent Societies in several countries.

Source: International Committee of the Red Cross (ICRC)